

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

LEOPOLDO CARDENAS,

Plaintiff,

v.

ELDON VAIL, *et al.*,

Defendants.

CASE NO. C09-5602RJB

ORDER TO PROVIDE
ADDITIONAL BRIEFING

This 42 U.S.C. § 1983 Civil Rights action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §§ 636(b)(1)(A) and (B) and Local Magistrate Judges' Rules MJR 1, MJR 3, and MJR 4. Before the court are a motion for summary judgment (Dkt. # 40) and a cross motion for summary judgment (Dkt. # 41). The first motion was noted for July 16, 2010, and the later motion was noted for August 6, 2010. In review of these motions the court finds three issues are not adequately briefed by the parties.

The first issue is in connection with the allegation that magazines were "stolen" by mailroom staff. The issue is whether the unauthorized taking of personal property constitutes a due process violation in Washington when the state provides a post deprivation remedy? In

1 answering this question the parties are directed to inform the court if Washington provides such a
2 post deprivation remedy.


3 The second issue is whether the policy ban on subscriptions that are over one year old
4 applies to a magazine that is a one-time publication and not a periodical? Additionally, plaintiff
5 and defendants should provide information whether "AC Glutes" is published annually, monthly,
6 or was a one-time publication.

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8 The final issue is whether the defendants' actions in rejecting the "AC Glutes Sumer
9 2006" furthered a legitimate penological goal, or whether this can be depicted as retaliation?
10 Defendants, through affidavits, should inform the court what legitimate goals, if any, they allege
11 were furthered by the rejection of this magazine.

12 Defendants brief answering these questions will be due on or before September 24, 2010.
13 Plaintiff's response will be due October 22, 2010. Any reply defendants wish to file will be due
14 on or before November 12, 2010. Dkt. # 40 and 41 are re-noted on the court's own motion for
15 November 12, 2010.

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17 The clerk's office is directed to send plaintiff a copy of this order and re-note the
18 summary judgment motions for November 12, 2010.

19 DATED this 7th day of September, 2010.
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23 J. Richard Creatura
24 United States Magistrate Judge
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